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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-245

GRIMM B. DEPANICIS and JAY R. WETHERILL,
Petitioners,

vs.

DEPARTMENT OF PUBLIC SAFETY,
TOWN OF NUTLEY,
Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

MEMORANDUM OPPOSING CERTIORARI

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Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12

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MEMORANDUM OPPOSING CERTIORARI

The Respondent, Department of Public Safety, Town of Nutley, answering the Petitioners' Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division, respectfully prays that the petition be denied for the following reasons.

I.

The opinion of the Superior Court of New Jersey, Appellate Division, was rendered on December 4, 1970. A petition for certification filed in the Supreme Court of New Jersey was denied on March 15, 1971. On June 9, 1971, Mr. Justice Brennan granted an extension of time to petitioners within which to file a petition for certiorari, to and including July 13, 1971.

The petition was not filed by petitioners until August 6, 1971, more than ninety days beyond the time required and as extended by this Court. To accomplish this filing, petitioners obtained an extension of time, *nunc pro tunc,* from Mr. Justice Brennan, without prejudice to the Court's consideration as to whether the application was in fact filed in time.

In all civil cases coming to the Supreme Court from a state court of last resort, Congress has provided in 28 U.S.C. section 2110(c) that a writ of certiorari shall be applied for within ninety days after the entry of final judgment or decree. It is further provided that the time may be extended by a Justice, for good cause shown, for a period not exceeding sixty days. Rule 22(3) of this Court prescribes that a petition for a writ of certiorari ". . . in all other cases shall be deemed in time when it and the certified record required by Rule 21 are filed with the Clerk within the time prescribed by law."

It is respectfully urged that the subject petition should be considered out of time. Indeed, the time limitations having been prescribed by Congress, an untimely filing, as in this case, constitutes a jurisdictional defect rendering it impossible for the Court to waive the untimeliness or to entertain the petition. Even where an unforeseeable snow storm created a postal delay and an

untimely filing, the Court denied the petition. *Teague* v. *Commissioner of Customs,* 394 U. S. 977 (1969). In such cases, the petition must be denied for want of jurisdiction. *Department of Banking* v. *Pink,* 317 U. S. 264, 268 (1942). And in *Credit Co.* v. *Ark. Central Railway,* 128 U. S. 258 (1888), it was held that an appeal not taken within the required time would not be entered *nunc pro tunc* so as to cure the defect. The sole reason presented by petitioners in this case in seeking an order *nunc pro tunc* was the "gross negligence" of the printer. It is respectfully urged that petitioners' application for a writ of certiorari is out of time and therefore should be denied by this Court.

II.

It is further respectfully urged that the petition for a writ of certiorari should be denied in this case because the decision below is clearly correct. The actions of the Nutley Police Department were reasonable and justified under the circumstances, and the challenged evidence was properly received in evidence by the New Jersey Civil Service Commission. The record before the Civil Service Commission contained substantial credible evidence to support its decision and order as affirmed by the Appellate Division of the New Jersey Superior Court. The total record is replete with evidence that the attitudes and approaches of both petitioners toward their obligations were at variance with their sworn duties. Their misconduct affected their employment performance, reflected discredit upon the Department and detrimentally affected the efficiency of the Department. The importance for a system of justice of the integrity and discipline of the personnel of local police forces cannot be over-emphasized. *Rivell* v. *Civil Service Commission,* 115

N. J. Super. 64, 278 A. 2d 218 (App. Div. 1971). Even when off duty, a police officer cannot be allowed to act with disregard to departmental regulations. *Hailes* v. *Kearney,* 101 N. J. L. 401, 128 A. 150 (E. & A. 1925). It should also be noted that petitioner DePanicis' refusal to obey an order of the Chief of Police was merely one of several factors which were considered in deciding upon his dismissal from the Department.

Finally, as to the argument that the Nutley Ordinance which petitioners were found to have violated is unconstitutionally vague, the facts are that petitioners were charged with several infractions of Nutley Ordinance No. 357 and numerous violations of the Rules and Regulations of the Nutley Police Department promulgated thereunder in 1967. The aforementioned ordinance and rules and regulations are framed with precision and possess reasonable standards for enforcement. They serve to establish reasonable guidelines and standards of conduct for police personnel which are neither impermissibly nor unconstitutionally vague.

For all the foregoing reasons, it is respectfully urged that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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